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ALEXANDER L. STEVAS,
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No. 82-711

IN THE

Supreme Court of the United States

October Term, 1982

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Petitioner

v.

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,
Respondent.

On Petition for a Writ of Certiorari to the Special Court, Regional Rail Reorganization Act of 1973

RESPONDENT SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

LEWIS H. VAN DUSEN, JR.
JOHN MARKLE, JR.
ROBERT H. YOUNG, JR.
Counsel of Record

DRINKER BIDDLE & REATH
1100 PNB Building
Broad and Chestnut Streets
Philadelphia, PA 19107
(215) 988-2700
Counsel for Respondent

International Printing Co., 711 So. 60th St., Phila., Pa. 19143 — Tel. (215) 727-5711

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RESPONDENT SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

I. COUNTER-STATEMENT OF THE CASE

On or about June 10, 1982, the Railway Labor Executives' Association (hereinafter "RLEA") filed a Complaint with the Special Court, Regional Rail Reorganization Act of 1973 (hereinafter "Special Court") seeking, among other things, a preliminary and permanent injunction en-

joining the Southeastern Pennsylvania Transportation Authority (hereinafter "SEPTA") from contracting out commuter rail ticket-selling operations in the Philadelphia metropolitan area. Pursuant to an Operating Agreement between SEPTA and Consolidated Rail Corporation (hereinafter "Conrail"), this work was performed by employees of Conrail who are represented by a labor organization which is a member of RLEA. The Complaint alleged that SEPTA was prohibited from contracting out this work without first complying with the provisions of Sections 508 and 510 of the Rail Passenger Service Act (hereinafter "RPSA"), 45 U. S. C. §§ 588, 590, as added by Section 1145 of the Northeast Rail Service Act of 1981 (hereinafter "NERSA"), Subtitle E of Title XI of the Omnibus Budget Reconciliation Act of 1981, P. L. 97-35, 95 Stat. 357.

The case was argued before the Special Court, Regional Rail Reorganization Act of 1973, on July 16, 1982. The Special Court, in a unanimous Opinion dated September 23, 1982, denied RLEA's motion for a preliminary injunction and dismissed the Complaint on the merits. Specifically, the Court held:

> "We nevertheless find that SEPTA's proposed takeover [of responsibility for ticket selling] is merely one of the small scale adjustments made in the way commuter service is historically provided for Philadelphia. The transfer of the ticket selling functions from Conrail to SEPTA may be characterized as routine and minor, and although involving a larger number of positions, is not substantially dissimilar to the changes approved in *SEPTA II* [*Railway Labor Executives' Association v. Southeastern Pennsylvania Transportation Authority*, 534 F. Supp. 852 (Sp. Ct. RRRA 1982)] and *SEPTA III* [*International Brotherhood of*

Teamsters, Local 732, IBT v. Southeastern Pennsylvania Transportation Authority, 539 F. Supp. 1222 (Sp. Ct. RRRA 1982)].

Appendix, 14a.[1] Following the issuance of the Special Court's Opinion, SEPTA, on September 27, 1982, advised Conrail that Conrail's staff should discontinue their ticket selling activities at all Reading Division stations on November 1, 1982.

On October 15, 1982, RLEA filed with the Special Court a Motion to Stay Effect of Decision and for Reconsideration. The Special Court denied RLEA's Motion by Order dated October 22, 1982.[2] On October 18, 1982, RLEA filed the present Petition for a Writ of Certiorari to the Special Court, Regional Rail Reorganization Act of 1973.

On October 29, 1982, RLEA filed an application to Chief Justice Warren E. Burger for a stay of the judgment of the Special Court. Chief Justice Burger denied the application on November 2, 1982. Two days later, RLEA renewed its application for a stay, this time addressing it to Justice William J. Brennan, Jr.

The Southeastern Pennsylvania Transportation Authority submits this Brief in opposition to RLEA's Petition for a Writ of Certiorari.

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1. Reference is to the Appendix submitted with RLEA's Petition for a Writ of Certiorari.

2. A copy of that Order is set forth in the Appendix attached to this Brief.

II. REASONS FOR DENYING THE WRIT

The Special Court Correctly Interpreted the Language and Intent of the Northeast Rail Service Act of 1981

Supreme Court Rule 17 provides that review on writ of certiorari will be granted "only when there are special and important reasons therefor." In its Petition for a Writ of Certiorari, RLEA sets forth no reason that could be characterized as "special" or "important".

RLEA's sole argument for the granting of certiorari is that the Special Court, according to RLEA, ignored the explicit language of NERSA and sat as a "super-legislature" creating statutory distinctions where none were intended. However, a review of the statutory language involved and of the decisions of the Special Court interpreting that language reveals that RLEA's arguments are without foundation.

In the first of a series of cases brought before the Special Court, RLEA argued that SEPTA could not take over *all* commuter rail operations on the Reading Division without complying with Sections 508 and 510 of RPSA, as added by Section 1145 of NERSA. *Railway Labor Executives' Association v. Southeastern Pennsylvania Transportation Authority*, 534 F. Supp. 832 (Sp. Ct. RRRA 1982), *cert. denied*, 102 S. Ct. 2271 (1982) (hereinafter "*SEPTA I*").[3] The Special Court agreed and the Supreme Court denied SEPTA's petition for a writ of certiorari. The Special Court did *not* hold, as alleged by RLEA in this case, that "any commuter service operated by Conrail on the effective date of NERSA (August 13, 1981) was subject to the labor transfer provisions of NERSA if a

3. Those sections require that "commuter authorities that intend to operate commuter service" negotiate implementing agreements with Conrail and the representatives of Conrail's employees to be transferred to the commuter authority and negotiate for collective bargaining agreements with those representatives.

commuter authority intended to operate the service on its own behalf." (Petition, 5)[4] Rather, the Court's decision in *SEPTA I*, as explained in *SEPTA II*, addressed only the consequences of a takeover of "the *entire* operation of commuter service on a line previously operated under contract by Conrail."[5] (emphasis added). The Court did not address the consequences of a takeover of an incidental, commuter-related function such as ticket selling.

In *SEPTA II*, the Special Court held that the labor transfer provisions of NERSA were designed to deal with the transfer of Conrail's commuter operations and the possible massive dislocation of Conrail employees and disruption of Conrail's workforce that this transfer could cause. Having held in *SEPTA I* that a commuter authority taking over the entire operation of commuter service was subject to Sections 508 and 510 of RPSA, the Court, in *SEPTA II*, accepted *arguendo* that the same was true of a commuter authority that intended to contract out the entire operation.[6] The Special Court went on to hold, however, that that was not the case before it. Rather, the issue in *SEPTA II* was

> "Whether §§ 508 and 510 of RPSA are applicable in a situation where a commuter authority seeks to complete the process of making a small-scale adjustment in the manner in which commuter service is provided when substantial steps towards making this adjust-

4. Reference is to RLEA's Petition for a Writ of Certiorari to the Special Court.

5. *Railway Labor Executives' Association v. Southeastern Pennsylvania Transportation Authority*, 534 F. Supp. 852, 855 (Sp. Ct. RRRA 1982). No petition for certiorari filed.

6. The Court did *not* hold, as RLEA's Petition suggests (Petition, 8), that its decision in *SEPTA I* applied to a commuter authority that contracted out "a function."

> ment had been taken prior to the effective date of NRSA."

534 F. Supp. at 855.

The Court looked to SEPTA's pre-NERSA preparations and discussions with Conrail and to the size of the function taken over not as a test in defining "commuter service", but rather as indications that SEPTA, in contracting out janitorial and grass cutting work, was merely making a minor adjustment in the way commuter service is provided in Philadelphia. The Court, in upholding SEPTA's right to contract out janitorial and grass-cutting work, made clear that it was not setting forth a test, each part of which had to be met, by stating, "We will decide subcontract cases lacking evidence of pre-NERSA preparations and consent by Conrail or involving more substantial portions of Conrail's commuter operations . . . when and if they arise." 534 F. Supp. at 857.

In *SEPTA III*,[7] the Special Court reached an identical result with respect to SEPTA's takeover of direct responsibility for security. The Court held that the number of employees involved together with the pre-NERSA actions of SEPTA and Conrail

> "strongly suggest that whatever harm Conrail and its employees may suffer is not comparable to the large-scale disruptions that the wholesale transfer of commuter operations was thought to entail."

539 F. Supp. at 1225.

In the present case, the Special Court, based on the precedent established in *SEPTA II* and *SEPTA III*, found that:

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7. *International Brotherhood of Teamsters Local 732, IBT v. Southeastern Pennsylvania Transportation Authority*, 539 F. Supp. 1222 (Sp. Ct. RRRA 1982). No petition for certiorari filed.

> "The pre-NERSA discussions between SEPTA and Conrail were no more or no less concrete with regard to the ticket selling functions than those same discussions were with regard to the janitorial and grass-cutting and security functions. The uncontroverted evidence shows that these three functions along with car cleaning and operation of the Newtown-Fox Chase Line were generally discussed in January and June of 1981."

Appendix, 13a. SEPTA's takeover of operations on the Newtown-Fox Chase Line, SEPTA's contracting out of janitorial and grass-cutting work, and SEPTA's assumption of responsibility for security were upheld by the Special Court in *SEPTA I*, *SEPTA II*, and *SEPTA III*. The Court's decision in the present case to uphold SEPTA's right to contract out ticket selling was entirely consistent with those earlier decisions.

RLEA argues that the present case is distinguishable from *SEPTA II* and *SEPTA III* and that certiorari is appropriate because "the sale of commutation tickets was explicitly referred to in the statutory definition of 'commuter service.'" (Petition, 11) The relevant language of NERSA quickly reveals the weakness of this argument.

Section 1135 of NERSA defines "commuter service" as "short-haul rail passenger service . . . usually characterized by reduced fare, multiple ride, and commutation tickets . . . ." Nowhere does the statute refer to the *selling* of tickets or state that an entity that sells commutation tickets is "operating commuter service." RLEA's argument, if accepted, would lead to the untenable conclusion that an organization which merely prints commutation tickets is operating commuter service. Furthermore, tickets can be sold just as easily by supermarkets and banks as by railroad ticket agents. Surely a super-

market selling commuter tickets is not operating commuter service.

In four separate cases, the Special Court has addressed the meaning of the phrase "commuter authorities that intend to operate commuter service." The Court consistently has determined that the takeover of minor, commuter rail related functions in accordance with pre-NERSA plans, does not evidence an intent to operate commuter service and does not trigger the provisions of Sections 508 and 510 of RPSA. The mere fact that the word "tickets" is mentioned in the definition of "commuter service" certainly does not require a different result.

Contrary to RLEA's assertions, the Special Court has not ignored the plain meaning of NERSA[8] nor has it acted as a super-legislature creating unwarranted statutory distinctions. Rather, consistent with the jurisdiction conferred on it by Section 1152 of NERSA, the Special Court has sought to interpret NERSA in a manner consistent with the intent of Congress. That intent was to "deal with the disruptions thought likely to accompany the large-scale transfer of commuter services from Conrail to other entities." *SEPTA II*, 534 F. Supp. at 856. The contracting out of ticket selling, in accordance with plans made by SEPTA before the passage of NERSA, will create no such disruptions and SEPTA's right to contract out this incidental function was properly upheld by the Special Court.

8. In *SEPTA II*, the Special Court correctly referred to NERSA as "an obscurely worded statute." *SEPTA II*, 534 F. Supp. at 856.

III. CONCLUSION

Petitioner RLEA has presented no compelling reason to justify the granting of certiorari in this case. Consequently, SEPTA respectfully urges that RLEA's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

LEWIS H. VAN DUSEN, JR.
JOHN MARKLE, JR.
ROBERT H. YOUNG, JR.
DRINKER BIDDLE & REATH
1100 PNB Building
Broad and Chestnut Streets
Philadelphia, PA 19107
(215) 988-2700
Counsel for Respondent

Dated: November 15, 1982

SPECIAL COURT
REGIONAL RAIL REORGANIZATION ACT OF 1973

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§ 1152 Panel C. A. No. 82-18

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Plaintiff,

v.

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY,
Defendant,

and

CONSOLIDATED RAIL CORPORATION, and
AMTRAK COMMUTER SERVICES CORPORATION
d/b/a COMMUTER SERVICES CORPORATION,
Rule 19 Parties.

ORDER DENYING MOTION OF RLEA FOR STAY OF DECISION AND FOR RECONSIDERATION

On October 15, 1982, the Railway Labor Executives' Association ("RLEA") filed a motion to stay the effect of the decision in the above captioned action and for reconsideration of that decision. Rule 18 of the Rules of the Court requires a petition for reconsideration to "state with particularity the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present." RLEA has

not presented any arguments in support of its motion for reconsideration. Its memorandum in support of its motion refers in a footnote to one point which it contends the Court overlooked. That point is that the Court overlooked RLEA's claim that inclusion of the word "commutation tickets" in the statutory definition of "commuter service" as found in § 1135(a)(4) of NRSA requires Southeastern Pennsylvania Transportation Authority ("SEPTA") to comply with the provisions of § 1145 of NRSA before assuming the ticket selling function. While we did not specifically discuss this point in our opinion of September 23, 1982, we accepted *arguendo* RLEA's contention that the selling of tickets constitutes commuter service and we rejected the contention that small scale adjustments to the manner commuter service is provided may not be made without invoking the provisions of § 1145. *See* Opinion of September 23, 1982, pp. 7-12. We find nothing in the motion for reconsideration to cause us to revise our opinion.

Insofar as the motion asks the Court to enjoin SEPTA from performing the ticket selling function through the services of an independent contractor, RLEA seeks substantially more than a mere stay of our decision which dismissed the complaint and denied the motion for a preliminary injunction. In its motion RLEA seeks to obtain that preliminary injunction. This action has been adequately briefed and argued and RLEA's memorandum in support of this motion contains no additional points of law or facts which would require us now to grant the injunctive relief that we had previously denied. Accordingly,

IT IS ORDERED that the motion of RLEA for a stay and reconsideration of this Court's decision of September 23, 1982, and judgment of September 28, 1982 be, and the same is, hereby denied.

/s/ OLIVER GASCH
Oliver Gasch
Presiding Judge

/s/ WILLIAM B. BRYANT
William B. Bryant
Judge

/s/ CHARLES R. WEINER
Charles R. Weiner
Judge

DATED:

Oct. 22nd 1982